

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: THURSDAY
DATE: NOVEMBER 12, 2015
CALENDAR: 9:00 A.M. CHAPTERS 13 AND 12 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-10004](#)-A-13 LARRY VALENCIA
MHM-2
MICHAEL MEYER/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO DISMISS CASE
9-17-15 [[49](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Granted

Order: Civil minute order

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this case, asserting that cause exists under § 1307(c) (1) and (6) as the debtor has failed to make all payments due under the plan. The trustee contends that the debtor is delinquent in the amount of \$5935.

The debtors admit the delinquency but state that they are filing a modified plan and motion to modify to be heard on December 22, 2015. But a modified plan has not been filed on the court's docket. The court will dismiss this case.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$5935. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c) (1), (6). The court hereby dismisses this case.

2. [13-17712](#)-A-13 RUBEN OLVERA AND GLORIA
FLG-5 CHAVEZ
PETER FEAR/MV
THOMAS GILLIS/Atty. for dbt.
PETER FEAR/Atty. for mv.

OBJECTION TO CONFIRMATION OF
PLAN BY FEAR LAW GROUP, P.C.
10-20-15 [[154](#)]

Final Ruling

The confirmation hearing is continued to November 19, 2015, at 9:00 to coincide with the hearing on the fee application of the trustee's attorney in chapter 7.

3. [15-13222](#)-A-13 TOMASA AVILA ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-19-15 [[31](#)]

DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

4. [12-11831](#)-A-13 LYDIA CLARY MOTION TO MODIFY PLAN
JDR-9 10-2-15 [[154](#)]
LYDIA CLARY/MV
JEFFREY ROWE/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

5. [13-10131](#)-A-13 CESAR/MELISSA RODRIGUEZ MOTION TO DISMISS CASE
MHM-3 9-18-15 [[61](#)]
MICHAEL MEYER/MV
MICHAEL MIRANDA/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, cause exists under § 1307(c)(1) and (6) to dismiss the case. The debtor has failed to make all payments due under the confirmed plan. Payments are delinquent in the amount of \$800.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss has been presented to the court. Having entered the default of the respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The debtor has failed to make all payments due under the confirmed chapter 13 plan in this case. Payments are delinquent in the amount of \$800. This delinquency constitutes cause to dismiss this case. 11 U.S.C. § 1307(c)(1), (6). The court hereby dismisses this case.

6. [13-17835](#)-A-13 GERALD/SANDRA CARTER MOTION TO MODIFY PLAN
SL-2 10-7-15 [[48](#)]
GERALD CARTER/MV
SCOTT LYONS/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and

3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

7. [15-10037](#)-A-13 JOSEPHINE MALONEY MOTION TO MODIFY PLAN
TCS-1 9-26-15 [[32](#)]
JOSEPHINE MALONEY/MV
TIMOTHY SPRINGER/Atty. for dbt.

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

8. [15-14039](#)-A-13 SYLVIA BALLADAREZ MOTION TO EXTEND AUTOMATIC STAY
TCS-1 10-23-15 [[9](#)]
SYLVIA BALLADAREZ/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c)(3)(B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

9. [10-16341](#)-A-13 JOSE GARCIA
MHM-3
MICHAEL MEYER/MV
HENRY NUNEZ/Atty. for dbt.
WITHDRAWN

MOTION TO DISMISS CASE
9-21-15 [[155](#)]

Final Ruling

The motion withdrawn, the matter is dropped as moot.

10. [10-17242](#)-A-13 PETER/TAMI ARNOLD
MHM-1
MICHAEL MEYER/MV

DAVID JENKINS/Atty. for dbt.

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
10-15-15 [[56](#)]

Final Ruling

Motion: Determination of Final Cure [Fed. R. Bankr. P. 3002.1(f)-(i)]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

For the reasons stated in the motion, the court will grant the relief requested. The respondent creditor failed to file any response to the trustee's notice of final cure under Rule 3002.1(f). Fed. R. Bankr. P. 3002.1(f), (g). The order will determine that the debtors have finally cured the default on their secured loan with respondent. Fed. R. Bankr. P. 3002.1(h).

The order will also state that the debtors are current on mortgage payments to respondent through June 2015. *Id.* Finally, the order may include a provision that respondent and its successors in interest are precluded from presenting, in any form, as evidence in any contested matter or adversary proceeding, any information that could have been provided in its response under Rule 3002.1(g) to the trustee's notice of final cure. Fed. R. Bankr. P. 3002.1(i).

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| 11. | 15-12243 -A-13 WILLIAM NILMEIER
WCC-7
WILLIAM NILMEIER/MV
WILLIAM COLLIER/Atty. for dbt.
RESPONSIVE PLEADING | MOTION TO CONFIRM PLAN
9-24-15 [61] |
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Tentative Ruling

The debtor has filed a motion to dismiss his case under § 1307(b). ECF No. 72. (The debtor must submit an order on that motion before the court will dismiss the case.) This request for dismissal of this chapter 13 case is inconsistent with his request seeking confirmation of a plan.

Because the request for dismissal was filed more recently than the motion to confirm, the dismissal request reflects the debtor's intent to not move forward with his reorganization in chapter 13, and by inference, not to seek confirmation of a plan. The court will treat the dismissal motion, therefore, as the debtor's intent to withdraw the confirmation motion. The matter will be dropped as moot.

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| 12. | 14-11045 -A-13 CATHERINE NELSON
PLF-4
CATHERINE NELSON/MV
PETER FEAR/Atty. for dbt. | MOTION TO MODIFY PLAN
9-29-15 [65] |
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Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

13. 15-11845 -A-13 ROBERT DOUGLAS JGB-2 ROBERT DOUGLAS/MV	CONTINUED MOTION TO VALUE COLLATERAL OF GREENLIGHT FINANCIAL SERVICES/ NATIONSTAR MORTGAGE LLC 7-10-15 [40]
JAMES BEIRNE/Atty. for dbt.	

Tentative Ruling

Motion: Value Collateral [Real Property; Principal Residence]

Notice: Written opposition filed by the responding party

Disposition: Continued to December 17, 2015 at 9:00

Order: Civil minute order or scheduling order

The motion seeks to value real property collateral that is the moving party's principal residence. An evidentiary hearing is required because the disputed, material factual issue of the collateral's value must be resolved before the court can rule on the relief requested.

The court will hold a scheduling conference for the purpose of setting an evidentiary hearing under Federal Rule of Bankruptcy Procedure 9014(d). At the parties' request, however, the court will allow the next 30 days for the parties to discuss settlement.

All parties shall appear at the next continued hearing for the purpose of determining the nature and scope of the matter, identifying the disputed and undisputed issues, and establishing the relevant scheduling dates and deadlines.

- (1) all relief sought and the grounds for such relief;
- (2) the disputed factual or legal issues;
- (3) the undisputed factual or legal issues;
- (4) whether discovery is necessary or waived;
- (5) the deadline for Rule 26(a)(1)(A) initial disclosures;
- (6) the deadline for Rule 26(a)(2) expert disclosures (including written reports);
- (7) the deadline for the close of discovery;
- (8) whether the alternate-direct testimony procedure will be used;
- (9) the deadlines for any dispositive motions or evidentiary motions;
- (10) the dates for the evidentiary hearing and the trial time that will be required;
- (11) any other such matters as may be necessary or expedient to the

resolution of these issues.

A joint status report shall be filed 14 days in advance of the continued hearing date. The parties may jointly address such issues orally at the continued hearing in lieu of a written joint status report.

14. [15-11845](#)-A-13 ROBERT DOUGLAS CONTINUED MOTION TO CONFIRM
JGB-2 PLAN
ROBERT DOUGLAS/MV 8-19-15 [[65](#)]
JAMES BEIRNE/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

The confirmation hearing is continued to December 17, 2015, at 9:00 a.m. to track with the hearing on the debtor's valuation motion filed at docket no. 40.

15. [12-16046](#)-A-13 ERNEST/KATHERINE SHELTON MOTION TO MODIFY PLAN
TCS-6 10-5-15 [[114](#)]
ERNEST SHELTON/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or

schedule a further hearing after additional briefing on any disputed legal issues.

16. [15-13346](#)-A-13 STEPHAN GRAHAM
MDE-1
TOYOTA MOTOR CREDIT
CORPORATION/MV
MATIN RAJABOV/Atty. for dbt.
MARK ESTLE/Atty. for mv.
- OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
9-22-15 [[19](#)]

No tentative ruling.

17. [15-13346](#)-A-13 STEPHAN GRAHAM
MHM-1
MICHAEL MEYER/MV
MATIN RAJABOV/Atty. for dbt.
- MOTION TO DISMISS CASE
10-27-15 [[29](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Continued to December 17, 2015 at 9:00 a.m.

Order: Not applicable

The court questions whether service on the debtor's attorney is sufficient. Service appears to have been made to the debtor's attorney at the address shown on the petition. But the court's matrix contains a different address: 8648 Olympic Blvd., Los Angeles, CA 90035-1975. This CM address also appears in the party information section of CM / ECF for the debtor's attorney.

Before the continued hearing, service shall be made on the debtor's attorney at both addresses. A supplemental proof of service may be filed no later than November 19, 2015.

18. [11-17253](#)-A-13 HAROLD/ROSE WAGNER
DRJ-1
HAROLD WAGNER/MV
M. ENMARK/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO SELL
10-8-15 [[32](#)]

Tentative Ruling

Motion: Sell Property [Real Property]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below and approved as to form and content by the Chapter 13 trustee

Property: 4682 W. Griffith Way, Fresno, CA

Buyer: Edgar Eduardo Borcequin and Laura Borcequin

Sale Price: 186,000

Sale Type: Private sale

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Confirmation of a Chapter 13 plan revests property of the estate in the debtor unless the plan or order confirming the plan provides otherwise. 11 U.S.C. § 1327(b); *see also In re Tome*, 113 B.R. 626, 632 (Bankr. C.D. Cal. 1990).

Here, the subject property is not property of the estate because the debtor's confirmed plan (the First Modified Chapter 13 Plan) provides that property of the estate revests in debtor upon confirmation of the plan. However, the confirmed plan obligates the debtor to obtain court authorization prior to transferring property, so the plan provides the basis for the court's authority to decide whether to approve the sale.

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). A Chapter 13 debtor has the rights and powers given to a trustee under § 363(b). 11 U.S.C. § 1303. Based on the motion and supporting papers, the court finds a proper reorganization purpose for this sale. The sale will be approved subject to the condition that Wells Fargo Bank, N.A.'s lien be paid in full from escrow. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

The order shall be approved by the Chapter 13 trustee as to form and content. Additionally, the order shall contain language requiring the Chapter 13 trustee to approve the escrow instructions for the sale.

19. [11-17253](#)-A-13 HAROLD/ROSE WAGNER
DRJ-2
HAROLD WAGNER/MV
M. ENMARK/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
10-8-15 [[35](#)]

Final Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden. The court will grant the motion and approve the modification of the plan.

20. [15-13354](#)-A-13 ALEJANDRO SOLORZANO
MHM-1
MICHAEL MEYER/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO DISMISS CASE
10-27-15 [[37](#)]

Tentative Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan.

The debtor has failed to commence making plan payments. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case.

The debtor has failed to provide the trustee with required or requested documents. See 11 U.S.C. § 521(a)(3)-(4).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

21. [14-15459](#)-A-13 SANDRA JUNIEL
TCS-1
SANDRA JUNIEL/MV
TIMOTHY SPRINGER/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO MODIFY PLAN
10-6-15 [[24](#)]

Tentative Ruling

Motion: Modify Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Pending

Order: Pending

The motion requests modification of the Chapter 13 plan in this case. See 11 U.S.C. §§ 1322, 1325, 1329; Fed. R. Bankr. P. 2002(b); LBR 3015-1(d)(2). The Chapter 13 trustee opposes the motion, objecting to the modification. But the moving party has not filed a reply to the opposition.

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are undisputed, the moving party may appear at the hearing and affirm that they are undisputed. The moving party may opt not to appear at the hearing, and such nonappearance will be deemed by the court as a concession that the trustee's grounds for opposition are undisputed and meritorious.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any

disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

22. [15-14062](#)-A-13 JOHN/NANCY ALVA
TCS-1
JOHN ALVA/MV
TIMOTHY SPRINGER/Atty. for dbt.

MOTION TO IMPOSE AUTOMATIC STAY
10-29-15 [[8](#)]

Tentative Ruling

Motion: Impose the Automatic Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted except as to any creditor without proper notice of the motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may impose the automatic stay where the debtor has had two or more previous bankruptcy cases that were pending within the 1-year period prior to the filing of the current bankruptcy case but were dismissed. See 11 U.S.C. § 362(c)(4)(B). The stay may be imposed "only if the party in interest demonstrates that the filing of the *later case* is in *good faith* as to the creditors to be stayed." *Id.* (emphases added). However, the motion must be filed no later than 30 days after the filing of the later case. *Id.* The statute does not require the hearing to be completed within such 30-day period.

The court finds that 2 or more cases were pending within the one-year period before the filing of the current bankruptcy case but were dismissed. For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of the motion.

23. [15-12767](#)-A-13 CRYSTAL REED AND JASSEN
MHM-1 CHUTE
MICHAEL MEYER/MV
BENNY BARCO/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO DISMISS CASE
9-30-15 [[23](#)]

No tentative ruling.

24. [15-14067](#)-A-13 WARREN/MICHELLE BOND MOTION TO EXTEND AUTOMATIC STAY
TCS-1 10-26-15 [[8](#)]
WARREN BOND/MV
TIMOTHY SPRINGER/Atty. for dbt.

Tentative Ruling

Motion: Extend the Automatic Stay

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted except as to any creditor without proper notice of this motion

Order: Prepared by moving party pursuant to the instructions below

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Upon request of a party in interest, the court may extend the automatic stay where the debtor has had one previous bankruptcy case that was pending within the 1-year period prior to the filing of the current bankruptcy case but was dismissed. See 11 U.S.C. § 362(c) (3) (B). Procedurally, the automatic stay may be extended only "after notice and a hearing *completed* before the expiration of the 30-day period" after the filing of the petition in the later case. *Id.* (emphasis added). To extend the stay, the court must find that the filing of the *later case* is in good faith as to the creditors to be stayed, and the extension of the stay may be made subject to conditions or limitations the court may impose. *Id.*

For the reasons stated in the motion and supporting papers, the court finds that the filing of the current case is in good faith as to the creditors to be stayed. The motion will be granted except as to any creditor without proper notice of this motion.

25. [15-12770](#)-A-13 DAVID SCISSONS AND RENEE MOTION TO DISMISS CASE
MHM-1 AWTREY-RODRIGUEZ 9-30-15 [[20](#)]
MICHAEL MEYER/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Dismiss Case

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

CASE DISMISSAL

The chapter 13 trustee moves to dismiss this chapter 13 case for a delinquency in payments under the debtor's proposed chapter 13 plan. For the reasons stated in the motion, cause exists under § 1307(c)(1), (c)(4) and § 1326(a)(1)(A) to dismiss the case. Payments under the proposed plan are delinquent in the amount of \$2000.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's motion to dismiss this chapter 13 case has been presented to the court. Having entered the default of respondent debtor for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted because of the delinquency under the proposed chapter 13 plan in this case. The court hereby dismisses this case.

26. [13-15375](#)-A-13 ROSEMARY GARCIA
PLG-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF PRICE LAW GROUP,
APC FOR STEVEN A. ALPERT,
DEBTORS ATTORNEY(S)
10-15-15 [[88](#)]

STEVEN ALPERT/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Price Law Group has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$4,000.00 and reimbursement of expenses in the amount of \$281.00.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Price Law Group's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$4,000.00 and reimbursement of expenses in the amount of \$281.00. The aggregate allowed amount equals \$4,281.00. As of the date of the application, the applicant held a retainer in the amount of \$400.00. The amount of \$3,881.00 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

27.	15-12776 -A-13 TONY/CHRISTINA BONILLA MHM-1 MICHAEL MEYER/MV JERRY LOWE/Atty. for dbt. WITHDRAWN	MOTION TO DISMISS CASE 9-30-15 [25]
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Final Ruling

The motion withdrawn, the matter is dropped as moot.

28. [13-15284](#)-A-13 CRISPIN/SILVIA RODRIGUEZ OBJECTION TO CLAIM OF VERNON
MHM-1 CRAWFORD, CLAIM NUMBER 5
MICHAEL MEYER/MV 9-17-15 [[48](#)]
DAVID JENKINS/Atty. for dbt.

Final Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(1); written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this objection. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Vernon Crawford filed Claim No. 5-1 in the amount of \$15,730.57 on September 6, 2013. The claim was amended by proof of claim 5-2 on April 3, 2015 to the amount of \$7405.30. The trustee has disbursed \$7694.75. The claim represented by Claim No. 5-1 and 5-2 will be allowed in the amount of \$7694.75 and disallowed for the remainder of the claim. The court will sustain the objection.

29. [15-13384](#)-A-13 ARTHUR/KAREN GONZALES OBJECTION TO CONFIRMATION OF
MHM-1 PLAN BY TRUSTEE MICHAEL H.
MEYER
10-20-15 [[24](#)]
VARDUHI PETROSYAN/Atty. for dbt.

Final Ruling

The debtors have withdrawn the plan to be considered at the confirmation hearing. The objection will be overruled as moot.

30. [11-61987](#)-A-13 JOSE/LETICIA CERDA MOTION TO DISMISS CASE
MHM-3 9-18-15 [[79](#)]
MICHAEL MEYER/MV
ADRIAN WILLIAMS/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN

Final Ruling

The motion withdrawn, the matter is dropped as moot.

31. [14-16093](#)-A-13 ERIC FELDMAN
JLR-4
ERIC FELDMAN/MV

OBJECTION TO CLAIM OF WELLS
FARGO BANK, N.A., CLAIM NUMBER
4
10-20-15 [[56](#)]

JERRY LOWE/Atty. for dbt.

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

PROCEDURE

The notice of hearing for this objection requires opposition to be served and filed at least 14 days preceding the hearing date. But the objection was filed only 23 days before the hearing and served only 22 days before the hearing.

Under Local Rule 3007(b) (1)'s notice procedure, the objection must be filed and served at least 44 days prior to the hearing date. Federal Rule of Bankruptcy Procedure 3007 requires at least 30 days, so when no opposition is required, the notice procedure of Local Rule 3007(b) (2) may be used.

Because less than 44 days' notice was provided the court will treat the matter as having been filed under Local Rule 3007(b) (2). In the future, at least 30 days' notice shall be given of all claims objections. Further, if written opposition is required, the objection shall be filed and served at least 44 days before the hearing.

ENFORCEABILITY OF CLAIM

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b) (1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b) (1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). The applicable statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the last transaction occurred more than 4 years ago on the credit account giving rise to the claim filed by the claimant. Thus, no payment has been made within the last four years before the filing of the petition on December 29, 2014, so whether the contract was oral or written, it would be unenforceable under California law.

32. [14-16093](#)-A-13 ERIC FELDMAN
JRL-3
ERIC FELDMAN/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1
10-20-15 [[52](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

PROCEDURE

The notice of hearing for this objection requires opposition to be served and filed at least 14 days preceding the hearing date. But the objection was filed only 23 days before the hearing and served only 22 days before the hearing.

Under Local Rule 3007(b)(1)'s notice procedure, the objection must be filed and served at least 44 days prior to the hearing date. Federal Rule of Bankruptcy Procedure 3007 requires at least 30 days, so when no opposition is required, the notice procedure of Local Rule 3007(b)(2) may be used.

Because less than 44 days' notice was provided the court will treat the matter as having been filed under Local Rule 3007(b)(2). In the future, at least 30 days' notice shall be given of all claims objections. Further, if written opposition is required, the objection shall be filed and served at least 44 days before the hearing.

ENFORCEABILITY OF CLAIM

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a

claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). The applicable statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the last transaction occurred more than 4 years ago on the credit account giving rise to the claim filed by the claimant. Thus, no payment has been made within the last four years before the filing of the petition on December 29, 2014, so whether the contract was oral or written, it would be unenforceable under California law.

33. [14-16093](#)-A-13 ERIC FELDMAN
JRL-5
ERIC FELDMAN/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF MIDLAND
FUNDING LLC, CLAIM NUMBER 6
10-20-15 [[60](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b)(2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

PROCEDURE

The notice of hearing for this objection requires opposition to be served and filed at least 14 days preceding the hearing date. But the objection was filed only 23 days before the hearing and served only 22 days before the hearing.

Under Local Rule 3007(b)(1)'s notice procedure, the objection must be filed and served at least 44 days prior to the hearing date. Federal Rule of Bankruptcy Procedure 3007 requires at least 30 days, so when no opposition is required, the notice procedure of Local Rule 3007(b)(2) may be used.

Because less than 44 days' notice was provided the court will treat the matter as having been filed under Local Rule 3007(b)(2). In the future, at least 30 days' notice shall be given of all claims objections. Further, if written opposition is required, the objection shall be filed and served at least 44 days before the hearing.

ENFORCEABILITY OF CLAIM

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b)(1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). The applicable statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the last transaction occurred more than 4 years prepetition on the credit account giving rise to the claim filed by the claimant. Thus, no payment has been made within the last four years before the filing of the petition on December 29, 2014, so whether the contract was oral or written, it would be unenforceable under California law.

34. [14-16093](#)-A-13 ERIC FELDMAN
JRL-6
ERIC FELDMAN/MV
JERRY LOWE/Atty. for dbt.
WITHDRAWN

OBJECTION TO CLAIM OF GOLDEN 1
CREDIT UNION, CLAIM NUMBER 7
10-20-15 [[68](#)]

Final Ruling

The objection withdrawn, the matter is dropped as moot.

35. [14-16093](#)-A-13 ERIC FELDMAN
JRL-7
ERIC FELDMAN/MV
JERRY LOWE/Atty. for dbt.

OBJECTION TO CLAIM OF LVNV
FUNDING, LLC, CLAIM NUMBER 8
10-20-15 [[64](#)]

Tentative Ruling

Objection: Objection to Claim

Notice: LBR 3007-1(b) (2); no written opposition required

Disposition: Sustained

Order: Prepared by objecting party

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

PROCEDURE

The notice of hearing for this objection requires opposition to be served and filed at least 14 days preceding the hearing date. But the objection was filed only 23 days before the hearing and served only 22 days before the hearing.

Under Local Rule 3007(b) (1)'s notice procedure, the objection must be filed and served at least 44 days prior to the hearing date. Federal Rule of Bankruptcy Procedure 3007 requires at least 30 days, so when no opposition is required, the notice procedure of Local Rule 3007(b) (2) may be used.

Because less than 44 days' notice was provided the court will treat the matter as having been filed under Local Rule 3007(b) (2). In the future, at least 30 days' notice shall be given of all claims objections. Further, if written opposition is required, the objection shall be filed and served at least 44 days before the hearing.

ENFORCEABILITY OF CLAIM

One basis for disallowing a claim filed by a creditor is that "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b) (1). If a claim cannot be enforced under state law, then the claim cannot be allowed after objection under § 502(b) (1). *In re GI Indus., Inc.*, 204 F.3d 1276, 1281 (9th Cir. 2000).

A statute of limitation under state law is an affirmative defense that is a proper basis for objection to a proof of claim. *Claudio v. LVNV Funding, LLC*, 463 B.R. 190, 195 (Bankr. D. Mass. 2012). Although a creditor may file a proof of claim under § 501(a) based on a stale claim, the claim will not be allowed under § 502(b) when an objection to claim raises an applicable statute of limitations as an affirmative defense. See *In re Andrews*, 394 B.R. 384, 388 (Bankr. E.D.N.C. 2008) (citing *In re Varona*, 388 B.R. 705 (Bankr. E.D. Va. 2008)).

The applicable statute of limitations in California bars an action on

a contract, obligation or liability founded on an instrument in writing after four years. Cal. Civ. Proc. Code §§ 312, 337(1). The applicable statute of limitations in California bars an action on an oral contract after two years. Cal. Civ. Proc. Code § 339.

The objection's well-pleaded facts show that the last transaction occurred more than 4 years prepetition on the credit account giving rise to the claim filed by the claimant. Thus, no payment has been made within the last four years before the filing of the petition on December 29, 2014, so whether the contract was oral or written, it would be unenforceable under California law.

36. [15-12996](#)-A-13 NIGEL MARIN CONTINUED MOTION TO DISMISS
MHM-1 CASE
MICHAEL MEYER/MV 9-23-15 [[34](#)]

No tentative ruling.

37. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION TO CONFIRM PLAN
FLG-1 9-21-15 [[15](#)]
CRYSTAL MONROY CERVANTES/MV
PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

38. [15-13096](#)-A-13 CRYSTAL MONROY CERVANTES MOTION TO VALUE COLLATERAL OF
FLG-2 MERCHANT CAPITAL SOURCE, LLC ,
CRYSTAL MONROY CERVANTES/MV MOTION TO VALUE COLLATERAL OF
QUICKFIX CAPITAL, AND/OR MOTION
TO VALUE COLLATERAL OF
YELLOWSTONE CAPITAL WEST, LLC
9-21-15 [[19](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Motion: Value Collateral [Personal Property; Non-vehicular]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the respondent is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

VALUATION OF COLLATERAL

Chapter 13 debtors may value collateral by noticed motion. Fed. R. Bankr. P. 3012. Section 506(a) of the Bankruptcy Code provides, "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property" and is unsecured as to the remainder. 11 U.S.C. § 506(a). For personal property, value is defined as "replacement value" on the date of the petition. *Id.* § 506(a)(2). For "property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *Id.* The costs of sale or marketing may not be deducted. *Id.*

The right to value non-vehicular, personal property collateral in which the creditor has a purchase money security interest is limited to such collateral securing a debt that was incurred more than one year before the date of the petition. 11 U.S.C. §1325(a) (hanging paragraph).

In this case, the debtor seeks to value collateral consisting of personal property described as (1) debtor business bank account #XXX7178; (2) business furniture and fixtures; and (3) business inventory. The debt secured by such property was not incurred within the 1-year period preceding the date of the petition. The court values the collateral at \$16,460.00.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to value non-vehicular, personal property collateral has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The personal property collateral described as a debtor business bank account #XXX7178, (2) business furniture and fixtures, and (3) business inventory has a value of \$16,460 and is secured by a lien in favor of Merchant Capital Source, LLC. No senior liens on the collateral have been identified. The respondent Merchant Capital Source, LLC has a secured claim in the amount of \$16,460.00 equal to the value of the collateral that is unencumbered by senior liens. The respondent has a general unsecured claim for the balance of the claim. QuickFix Capital and Yellowstone Capital West, LLC have junior liens that are supported by value and shall be treated as general unsecured claims.

39. [10-19454](#)-A-13 DAVID/RAQUEL STEBBINS
PK-8

CONTINUED MOTION FOR
COMPENSATION FOR PATRICK
KAVANAGH, DEBTORS ATTORNEY(S)
10-13-15 [[152](#)]

PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 13 case, Patrick Kavanagh, counsel for the debtors, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2,070.00 and reimbursement of expenses in the amount of \$0.00. The applicant also asks that the court allow on a final basis all prior applications for fees and costs that the court has previously allowed on an interim basis.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Patrick Kavanagh's application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,070.00 and reimbursement of expenses in the amount of \$0.00. The aggregate allowed amount equals \$2,070.00. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$2,070.00 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held. The court also approves on a final basis all prior applications for interim fees and costs that the court has allowed under § 331 on an interim basis.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the terms of the confirmed plan.

40.	15-12850 -A-13 BRUCE/VICTORIA DAINS SJS-1 BRUCE DAINS/MV SUSAN SALEHI/Atty. for dbt.	CONTINUED MOTION TO CONFIRM PLAN 9-22-15 [34]
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Final Ruling

Motion: Confirm Chapter 13 Plan

Notice: LBR 3015-1(d)(1), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by debtor's counsel using Form EDC 3-081 and signed by the trustee

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(1), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1325 and by Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve confirmation of the plan.

41. [14-13896](#)-A-13 JOHN/MARY TRUJILLO
MSN-1
JOHN TRUJILLO/MV
MARSHALL MOUSHIGIAN/Atty. for dbt.

MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
9-21-15 [[27](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.